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ECF FILED ON 10/21/09

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re:)	BK-S-09-10664-LBR
)	Chapter 13
ERIC SWOGGER, and)	
ANITA C. SWOGGER,)	
)	
Debtor in Possession,)	DATE: 11-04-09
)	TIME: 10:30 A.M.

OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY

COMES NOW, the Debtors, ERIC and ANITA SWOGGER, (hereinafter "Debtors"), by and through their attorney, CHRISTOPHER P. BURKE, ESQ., and respectfully requests this Court to deny the Motion For Relief From The Automatic Stay, filed by Creditor, WELLS FARGO BANK, N.A., (hereinafter "Wells Fargo") by and through their attorneys, GREGORY L. WILDE, ESQ. of WILDE & ASSOCIATES and MARK S. BOSCO, ESQ. of TIFFANY & BOSCO, P.A.. This Opposition is based upon the pleading and papers on file herein and the Memorandum of Points and Authorities, attached hereto and incorporated herein.

FACTS

On January 19, 2009, a Chapter 11 bankruptcy was filed on behalf of Debtors. Listed as a secured creditor is Wells Fargo, the lien holder on the property located at 11876 Principle Ct., Las Vegas, Nevada 89123.

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2 **POINTS AND AUTHORITIES**
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4 11 USC Section 362 (d) (1) states that the Court may
5 terminate, modify or condition stay
6 for cause, including the lack of adequate
7 protection of an interest in property of such
8 party in interest;---

9 11 USC Section 362 (d) (2) the Court may terminate, modify or
10 condition a stay
11 with respect to a stay of an act against
12 property under subsection (a) of this section,
13 if-

- 14 (A) the debtor does not have an equity
15 in such property AND
16 (B) such property is not necessary to
17 an effective reorganization

18 Creditor is seeking relief from stay because of Debtors lack
19 of post petition payments on their mortgage. At this time, Debtor
20 owed approximately \$258,500.00 on her first mortgage to Wells
21 Fargo Bank, N.A. Creditor estimate the property has a value of
22 \$320,000.00.

23 First, Debtor argues Wells Fargo does not have standing to
24 bring this motion as they are not a real party in interest.
25 F.R.B.P. 7019. Second, Debtors argue there is 30% equity in the
26 property. As such this 'equity cushion' is enough to deny the
27 lifting of the stay. Third, even if there is no equity in the
28 property, the property must also not be necessary for a
reorganization for the stay to lift. 11 U.S.C. § 362(d)(2).

Fourth, Debtor requests six (6) months to get current. Once,
current, the Debtor will then maintain their regular monthly
mortgage payments to Wells Fargo.

1 THEREFORE, Debtors requests that, the Motion for Relief from
2 Automatic Stay, be denied, or in the alternative stayed for a
3 period of time to allow Debtor to become current with their
4 payments.

5 DATED, this 21st day of October, 2009.
6

7 RESPECTFULLY SUBMITTED:
8

9
10 /S/CHRISTOPHER P. BURKE, ESQ.
11 CHRISTOPHER P. BURKE, ESQ.
12 Attorney for Debtor
13 218 S. Maryland Pkwy.
14 Las Vegas, NV 89101
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CERTIFICATE OF MAILING OF OPPOSITION TO
MOTION FOR RELIEF FROM THE AUTOMATIC STAY

The undersigned hereby certifies that on October 21, 2009, a true and correct copy of the OPPOSITION TO MOTION FOR RELIEF FROM THE AUTOMATIC STAY; was mailed by depositing a copy of the same in a sealed envelope, postage prepaid, in the Untied States Mail to the names and addresses listed below:

Gregory L. Wilde, Esq.
WILDE & ASSOCIATES
208 S. Jones Blvd.
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U.S. Trustee
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Las Vegas, NV 89101

Eric & Anita Swogger
11876 Principle Ct.
Las Vegas, NV 89123

/S/KARYN HOLLINGSWORTH

/S/KARYN HOLLINGSWORTH
Employee of
Christopher P. Burke, Esq.